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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ROBERT MITCHELL,) CASE NO. C08-0980-MJP-MAT
09 Plaintiff,)
10 v.) ORDER RE: PLAINTIFF'S
11 RODNEY ASKELSON, et al.,) PENDING MOTIONS
12 Defendants.)
13 _____)

14 This is a civil rights action brought under 42 U.S.C. § 1983. Currently pending before the
15 Court are plaintiff's motion to resubmit his previously stricken summary judgment motion,
16 plaintiff's second motion for appointment of counsel, and plaintiff's second and third motions for
17 appointment of a jury. The Court, having reviewed plaintiff's motions, and the balance of the
18 record, does hereby find and ORDER:

19 (1) Plaintiff's motion to resubmit his previously stricken motion for summary judgment
20 (Dkt. No. 39) is DENIED. Plaintiff, by way of the instant motion, seeks leave of Court to
21 resubmit a motion for summary judgment which he originally submitted to the Court before his
22 complaint was ordered served on defendants and which was stricken by the Court as premature.

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01 While plaintiff may, if he chooses, pursue summary judgment at this time, he may only do so by
02 way of a motion which fully complies with the requirements of Local Rule CR 7(b). The motion
03 papers thus far submitted by plaintiff do not comply with these requirements as plaintiff has
04 provided no proof that he has served his motion papers on the opposing parties nor has plaintiff
05 identified a proper noting date for his summary judgment motion.

06 (2) Plaintiff's second motion for appointment of counsel (Dkt. No. 41) is DENIED.
07 As plaintiff was previously advised, there is no right to have counsel appointed in cases brought
08 under 42 U.S.C. § 1983. Although the Court, under 28 U.S.C. § 1915(e)(1), can request counsel
09 to represent a party proceeding *in forma pauperis*, the Court may do so only in exceptional
10 circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*,
11 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding
12 of exceptional circumstances requires an evaluation of both the likelihood of success on the merits
13 and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal
14 issues involved. *Wilborn*, 789 F.2d at 1331.

15 Plaintiff has neither demonstrated a likelihood of success on the merits nor shown that, in
16 light of the complexity of the legal issues involved, he is unable to articulate his claims pro se.
17 Thus, plaintiff has not demonstrated that this case involves exceptional circumstances which
18 warrant appointment of counsel.

19 (3) Plaintiff's second and third motions for appointment of a jury (Dkt. Nos. 45 and
20 47) are STRICKEN. Plaintiff has already submitted a jury demand which has been accepted by
21 the Court. (*See* Dkt. No. 30 and Dkt. No. 32 at 1 n. 1.) Accordingly, the instant motions are
22 moot.

(4) The Clerk shall send copies of this Order to plaintiff, to counsel for defendants, and to the Honorable Marsha J. Pechman.

DATED this 24th day of October, 2008.

Mae O'Brien

Mary Alice Theiler
United States Magistrate Judge